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Corporate Criminal Liability In Tax Crimes From The Perspective of The Strict Liability Doctrine

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ABSTRACT

Tax crimes are a form of economic crime that has the potential to cause significant losses to state revenues. The development of corporate activity as a major component of economic activity indicates that various tax crimes are no longer committed individually, but rather through policies and systems developed by corporations. However, Law Number 28 of 2007 concerning General Provisions and Procedures for Taxation and Law Number 7 of 2021 concerning the Harmonization of Tax Regulations do not explicitly regulate corporations as subjects of criminal law that can be held accountable. This situation creates a legal vacuum, legal uncertainty, and suboptimal protection of state finances. This study aims to analyze the urgency of regulating corporate criminal liability in tax crimes, examine the relevance of applying the strict liability doctrine as the basis for corporate criminal liability, and formulate an ideal legal regulation formulation for the future. This study uses a normative juridical method with a statutory, conceptual, and case-based approach. Legal materials were obtained through a literature review of laws and regulations, court decisions, legal literature, and scientific journals. The materials were analyzed using systematic and grammatical interpretation. The findings indicate that the lack of regulations regarding corporate criminal liability hampers the effectiveness of tax law enforcement and the recovery of state revenue losses. The strict liability doctrine is relevant for limited application to certain tax crimes while still adhering to the principle of due process of law. Legal reform through a revision of the KUP Law is needed to recognize corporations as subjects of criminal law and to comprehensively regulate accountability mechanisms, types of sanctions, and case resolution to ensure legal certainty, justice, and protection of state finances.

Keywords: corporate criminal liability; tax crimes; strict liability; criminal law policy; legal reform.

1. INTRODUCTION

Taxes are the primary instrument of state financing, playing a strategic role in ensuring the sustainability of national development. Within the concept of a welfare state, the state requires a stable source of funding to implement various development programs, from infrastructure provision to education and health care to social protection. In Indonesia, taxes are the largest source of state revenue, supporting the implementation of the State Budget (APBN). The country's high dependence on tax revenues demonstrates that the success of national development is heavily influenced by the level of taxpayer compliance, both individual and corporate taxpayers. According to data from the Indonesian Ministry of Finance, tax revenue realization in 2024 reached IDR 1,932.4 trillion, or 100.5% of the APBN target. This demonstrates that the tax sector remains a key pillar of state finances despite ongoing global economic uncertainty. This situation also demonstrates that the effectiveness of the tax system is closely linked to the state's ability to achieve its constitutional objectives, as mandated in the Preamble to the 1945 Constitution of the

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Republic of Indonesia, namely to protect the entire Indonesian people and advance the general welfare. (Constitution of the Republic of Indonesia, 1945; Morris, 2013)

The Indonesian Constitution explicitly legitimizes tax collection through Article 23A of the 1945 Constitution of the Republic of Indonesia, which states that taxes and other compulsory levies are regulated by law. This provision was then implemented through Law Number 28 of 2007 concerning the Third Amendment to Law Number 6 of 1983 concerning General Provisions and Tax Procedures, which defines taxes as mandatory contributions to the state that are compulsory based on law without receiving direct compensation. Thus, the obligation to pay taxes is not only an administrative obligation, but also a manifestation of the constitutional responsibility of every citizen and business entity in supporting national development. Therefore, any form of violation of tax obligations is essentially not only detrimental to state finances, but also hinders the fulfillment of community rights that are funded through tax revenues. (Constitution of the Republic of Indonesia, 1945; Law No. 28 of 2007)

As economic activity and investment increase, corporations have emerged as one of the largest contributors to national tax revenue. Large corporations, both state-owned enterprises and national private companies, are major contributors to tax revenue through various tax obligations. However, the strategic position of corporations as the largest taxpayers also carries with it an increased risk of tax system abuse. The complexity of organizational structures, the large value of business transactions, and the use of various modern financial instruments create opportunities for various forms of organized tax crimes. In many cases, tax crimes are no longer committed individually but rather become part of a corporate policy or strategy to illegally gain economic advantage by reducing or avoiding tax obligations owed to the state. (Setiyono, 2004; Sjahdeini, 2017; Morris, 2013)

The development of tax crimes exhibits distinct characteristics compared to conventional crimes. Tax crimes fall into the category of white-collar crimes, which have a low level of visibility, are difficult to detect, utilize complex administrative mechanisms, and are often carried out through document manipulation or seemingly legitimate business transactions. One of the most frequently encountered forms of tax crime is the use or issuance of tax invoices that are not based on actual transactions (fictitious tax invoices), the submission of false Tax Returns (SPT), and the manipulation of other tax obligations as stipulated in the Law on General Provisions and Tax Procedures. These offenses may cause significant losses to state revenue and therefore require a criminal accountability mechanism capable of addressing both the individual actors involved and corporate entities that directly benefit from the offense. (Morris, 2013; Setiyono, 2004)

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Problems arise when tax law enforcement practices often place corporate directors as the sole subjects of criminal liability, while corporations, as entities that derive economic benefits, are not subject to criminal sanctions. This phenomenon is evident in Decisions Number 3839/Pid.Sus/2020/PN Mdn and Decision Number 35/Pid.Sus/2022/PN Lsm, both of which relate to the criminal act of using fictitious tax invoices as stipulated in Article 39A of the Law on General Provisions and Tax Procedures. In both cases, the courts only imposed criminal penalties on company directors, while the corporations, as the parties receiving economic benefits, were not named as defendants. This situation indicates that law enforcement is still oriented towards personal liability and has not fully accommodated the concept of corporate criminal liability as developed in modern criminal law. (Ali, 2015; Setiyono, 2004; Sjahdeini, 2017)

The suboptimal implementation of corporate criminal liability is inextricably linked to the weaknesses in normative arrangements within tax legislation. Neither the Law on General Provisions and Tax Procedures nor Law Number 7 of 2021 concerning the Harmonization of Tax Regulations explicitly stipulates that corporations are criminally liable. The use of the phrase "every person" in criminal provisions leads to the interpretation that the legal subject in question is primarily directed at humans as perpetrators of crimes. Consequently, law enforcement officials face difficulties in determining the legal basis for naming corporations as defendants, determining who will represent them in court, and imposing appropriate penalties for the characteristics of legal entities. (Mendrofa, 2013; Law No. 28 of 2007)

This normative gap has resulted in various legal consequences for law enforcement practice. Investigators, public prosecutors, and judges lack adequate guidance regarding the mechanisms for proving corporate wrongdoing, the relationship between management actions and corporate intentions, or the types of sanctions that can be imposed on legal entities. Despite the existence of Attorney General Regulation No. 28 of 2014 concerning Guidelines for Handling Criminal Cases with Corporate Legal Subjects and Supreme Court Circular No. 4 of 2021 concerning the handling of tax crimes, these two instruments lack the normative force of laws and therefore are unable to address the lack of material regulations regarding corporate criminal liability in the tax sector. Consequently, law enforcement practices still tend to avoid prosecuting corporations despite strong indications that the crimes were committed for corporate interests.

If these conditions persist, the objectives of criminal law, including justice, legal certainty, and social utility, will not be optimally achieved. Corporations that profit from criminal acts can continue their business activities after their directors have been sentenced, and it is even possible to appoint new directors to continue the company's activities. This situation does not provide a deterrent effect on business entities as the primary perpetrators of economic crimes, and also

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creates inequality in the criminal liability system because only individuals bear the legal consequences, while corporations, as recipients of economic benefits, remain protected. Therefore, a criminal liability formulation that can directly reach corporations is needed so that the preventive and repressive functions of criminal law can be effectively realized. (Arief, 2013; Hiariej, 2016)

In the development of modern criminal law, various countries have developed various doctrines of corporate criminal liability, such as identification theory, vicarious liability, aggregation theory, corporate culture model, and strict liability. Each doctrine has its own characteristics in determining the relationship between individual actions and corporate liability. Among these doctrines, strict liability offers a simpler approach because, where expressly provided by law, it permits criminal liability without requiring proof of subjective fault in the form of intent or negligence. The primary focus of this doctrine is on the violation of legal obligations that cause harm or endanger the public interest. This approach is widely applied to crimes related to the public interest, including environmental protection, public health, food safety, and other areas that pose a high risk to society. (Ali, 2015; Hiariej, 2016; Moeljatno, 2008; Sjahdeini, 2017)

The application of the strict liability doctrine is already well-known in the Indonesian legal system, one example being Article 88 of Law Number 32 of 2009 concerning Environmental Protection and Management, which introduces the concept of absolute liability without the need for proof of fault. Although this provision primarily operates in the civil-law context, its existence demonstrates that national law has accepted the concept of risk-based liability to protect the broader public interest. Therefore, a similar approach is worthy of consideration in reforming criminal tax law, given that tax crimes also cause losses that directly affect state finances and public welfare. The use of the strict liability doctrine has the potential to strengthen the effectiveness of law enforcement by reducing the obstacles to proving the element of corporate fault, which has historically been a major obstacle in the prosecution process. (Arief, 2013; Hiariej, 2016; Law No. 32 of 2009)

From a political perspective on criminal law, the development of legal policies regarding corporate criminal liability must be directed towards addressing the needs of society and the increasingly complex development of economic crimes. Criminal law politics encompasses not only changes in legal norms but also how the legal system can protect state interests through the formulation of adaptive, responsive, and justice-oriented regulations. Tax law reforms need to accommodate the recognition of corporations as subjects of criminal law, along with accountability mechanisms, types of crimes, procedures for proving the law, and the implementation of criminal penalties against legal entities. Thus, criminal tax law functions not only as a repressive instrument

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but also as a means of preventing the rise in corporate crime in the tax sector. (Arief, 2020; Adinda, 2024)

Based on this description, research on corporate criminal liability in tax crimes from a strict liability doctrine perspective is crucial. This research stems from the gap between the development of the concept of corporate criminal liability in modern criminal law and normative regulations in the taxation sector, which still leave a legal vacuum. Furthermore, this research also seeks to provide a legal construction that can serve as a recommendation for reforming legislation (ius constituendum) so that corporations proven to have benefited from or played a role in tax crimes can be held directly criminally accountable. With this formulation, it is hoped that tax law enforcement in Indonesia will provide legal certainty, guarantee justice for the state as the injured party, and strengthen the effectiveness of the tax system in supporting national development. (Ali, 2015; Arief, 2020)

2. RESEARCH METHODS

This study is normative legal research that focuses on examining the norms, principles, doctrines, and provisions of laws and regulations related to corporate criminal liability in tax crimes from the perspective of the strict liability doctrine. This research uses three approaches: the statute approach, the conceptual approach, and the case approach. The statutory approach is used to examine various regulations governing criminal law and taxation, including the Criminal Code (KUHP), Law Number 28 of 2007 concerning the Third Amendment to Law Number 6 of 1983 concerning General Provisions and Tax Procedures, Law Number 7 of 2021 concerning Harmonization of Tax Regulations, Supreme Court Regulation Number 13 of 2016 concerning Procedures for Handling Criminal Cases by Corporations, Attorney General Regulation Number PER-028/A/JA/10/2014 concerning Guidelines for Handling Criminal Cases with Corporate Legal Subjects, and Supreme Court Circular Letter Number 4 of 2021 concerning the Application of Several Provisions in Handling Criminal Acts in the Taxation Sector. The conceptual approach is used to analyze the theory and doctrine of corporate criminal liability, especially the doctrine of strict liability, while the case approach is carried out through a review of Decision Number 3839/Pid.Sus/2020/PN Mdn as the main object in analyzing the application of corporate criminal liability in tax crimes. (Marzuki, 2010)

The legal materials used in this study consist of primary, secondary, and tertiary legal materials. Primary legal materials include laws and court decisions related to the research object. Secondary legal materials include books, scientific articles, legal journals, and expert opinions discussing criminal law, tax law, and corporate criminal liability. Tertiary legal materials consist of

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legal dictionaries, the Big Indonesian Dictionary (KBBI), Black's Law Dictionary, and other relevant legal sources. Legal materials were collected through literature review and searches of authoritative online legal sources to obtain relevant and up-to-date materials. The collected materials were then analyzed using systematic and grammatical interpretation. Systematic interpretation is used to interpret legal provisions by connecting them to the entire applicable legal system, while grammatical interpretation is used to understand the meaning of statutory provisions based on linguistic rules. Through these methods, this study aims to analyze the positive legal regulations (ius constitutum) regarding corporate criminal liability in tax crimes while formulating recommendations for legal reform (ius constituendum) through the application of the strict liability doctrine. (Marzuki, 2010)

3. RESULTS AND DISCUSSION

The Urgency of Corporate Criminal Liability Regulations in Tax Crimes

The analysis indicates that the regulation of corporate criminal liability in tax crimes in Indonesia still does not provide a comprehensive legal basis for placing corporations as subjects of criminal law. Although corporations are recognized as taxpayers under the provisions of tax laws and regulations, regulations regarding the imposition of criminal liability on corporations have not been explicitly formulated in the criminal provisions contained in the Law on General Provisions and Tax Procedures (UU KUP). This condition indicates a difference between the recognition of corporations as subjects of tax administration law and their recognition as subjects of criminal law. (Mendrofa, 2013; Ali, 2015)

Analysis of the provisions of the KUP Law indicates that criminal norms in the taxation sector frequently use the phrase "every person" as a subject subject to criminal sanctions. This use of the phrase is not accompanied by an explanation of whether corporations are included within the scope of the intended criminal law subjects. Consequently, this provision creates room for varying interpretations in law enforcement practices, leading law enforcement officials to direct criminal liability toward individuals acting on behalf of corporations. (Mendrofa, 2013; Law No. 28 of 2007)

The analysis also indicates that Article 38, Article 39, Article 39A, and Article 43 of the KUP Law have regulated various forms of tax crimes, ranging from negligence in fulfilling tax obligations to deliberate acts, such as submitting incorrect Tax Returns (SPT), unauthorized use of Taxpayer Identification Numbers (NPWP), issuing tax invoices that are not based on actual transactions, and acts of assisting or participating in committing tax crimes. However, these

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regulations do not yet include a mechanism for criminal liability if the crime is committed for the benefit of a corporation or on behalf of a corporation. (Law No. 28 of 2007; Mendrofa, 2013)

The findings indicate that the lack of explicit regulations regarding corporate criminal liability has resulted in law enforcement practices still oriented toward individual criminal liability. In various tax cases, investigators, public prosecutors, and judges often prosecute directors, commissioners, or company administrators as defendants without holding the corporations criminally liable. This pattern of law enforcement demonstrates that the criminal liability system in the tax sector still prioritizes the concept of personal liability. (Ali, 2015; Mendrofa, 2013)

An examination of Decision Number 3839/Pid.Sus/2020/PN Mdn shows that the criminal act of issuing tax invoices not based on actual transactions was committed within CV. Camar Indah's business activities. This act resulted in losses to state revenue amounting to billions of rupiah. However, the panel of judges only imposed a criminal penalty on the company's director, while CV. Camar Indah, as the entity that benefited economically from the crime, was not held criminally responsible.

Similar findings were also evident in Decision Number 35/Pid.Sus/2022/PN Lsm. In this case, criminal sanctions were again imposed on company management without any subsequent prosecution of the corporation. This research demonstrates a consistent pattern in tax criminal justice practice: criminal liability is focused more on individual perpetrators, even when the crime was committed in the course of conducting corporate business activities or providing benefits to the corporation.

Further analysis indicates that this practice occurs even though Indonesia has several legal instruments that regulate the handling of corporate crimes, such as Supreme Court Regulation Number 13 of 2016, Attorney General Regulation Number PER-028/A/JA/10/2014, and Supreme Court Circular Letter Number 4 of 2021. These three regulations have provided guidelines regarding the procedures for handling criminal cases involving corporations, but have not been able to become a material legal basis for imposing criminal liability on corporations in tax crimes because the KUP Law itself does not regulate it explicitly. (Zakaria, 2019; Ali, 2015)

The study further indicates that the lack of norms in the KUP Law has resulted in legal uncertainty for law enforcement officials. In practice, investigators have difficulty determining when corporations can be named suspects, public prosecutors face challenges in formulating indictments against legal entities, and judges lack a sufficient normative basis for imposing criminal penalties on corporations. As a result, law enforcement is directed more at individuals representing corporations than at the corporations themselves.

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In addition to creating legal uncertainty, research shows that the lack of corporate criminal liability reduces the effectiveness of tax law enforcement. Corporations that derive economic benefits from criminal acts can continue their business operations after their management has been convicted. This situation prevents the objectives of criminal penalties, such as deterrence, crime prevention, and recovery of state losses, from being optimally realized.

The analysis indicates that the characteristics of tax crimes are closely linked to corporate activities. Most tax violations are committed through company policies, tax administration, and business transactions involving various organizational elements. Therefore, imposing criminal liability solely on company management does not fully reflect the parties who benefit from these crimes. (Setiyono, 2004; Sjahdeini, 2017)

The analysis also indicates that state losses resulting from tax crimes involving corporations are generally much greater than those caused by crimes committed by individuals. This is due to the large scale of corporate business activities, high transaction values, and the corporation's ability to exploit organizational structures and administrative systems to systematically commit tax violations. Therefore, a criminal accountability mechanism is needed that can reach legal entities as perpetrators of criminal acts. (Setiyono, 2004; Sjahdeini, 2017)

Based on research into various applicable legal provisions, no comprehensive regulation has been found explaining the forms of corporate wrongdoing, the mechanisms for proving the case, the parties representing corporations in criminal proceedings, or the types of penalties that can be imposed on corporations in tax cases. This gap indicates that current positive legal regulations are unable to accommodate developments in corporate criminal liability as they have developed in modern criminal law. (Mendrofa, 2013; Ali, 2015)

Further analysis indicates that the existence of various regulations outside the KUP Law has not been able to address this normative gap, as they only address procedural aspects of handling corporate cases. Therefore, regulations regarding corporations as subjects of criminal law still require a material legal basis expressly stipulated in tax law to avoid differences in interpretation in law enforcement practices.

Overall, this study finds an urgent need to update regulations regarding corporate criminal liability for tax crimes. This update is necessary so that corporations are no longer positioned solely as taxpayers in administrative terms, but also as subjects of criminal law that can be held accountable if they benefit from or play a role in the commission of tax crimes. With these regulations, it is hoped that legal certainty and effective law enforcement in the tax sector can be more assured. (Ali, 2015; Mendrofa, 2013)

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Based on these findings, this study concludes that the urgency of regulating corporate criminal liability in tax crimes is not only based on the lack of norms in positive law, but also on the need to create a more effective and fair law enforcement system that provides optimal protection for state financial interests. These findings form the basis for further discussion regarding the formulation of corporate criminal liability through the application of the strict liability doctrine as an alternative to reforming criminal tax law in Indonesia. (Arief, 2020; Ali, 2015)

Legal Implications of the Legal Vacuum in the Absence of Regulations on Corporate Criminal Liability in Tax Crimes

The findings indicate that the regulation of corporate criminal liability in tax crimes in Indonesia still leaves a gap in norms that impacts the effectiveness of law enforcement. The old Criminal Code (KUHP) did not recognize corporations as subjects of criminal law, so the concept of criminal liability was directed only at humans as perpetrators of crimes. Although various laws outside the KUHP have recognized corporations as subjects of criminal law, this provision has not been explicitly adopted in the Law on General Provisions and Tax Procedures (UU KUP) or the Law on Harmonization of Tax Regulations (UU HPP). Yet, the development of modern economic activity shows that corporations have a very dominant position in the national tax system, both as taxpayers and as the main actors in business activities that generate tax obligations. This condition creates an imbalance between the development of business practices and the development of criminal tax law, which is still oriented towards individual accountability. (Moeljatno, 2008; Mendrofa, 2013)

Corporations contribute significantly to national development through the payment of various taxes, which are the primary source of state revenue. Every business activity undertaken by corporations results in tax consequences that directly contribute to development financing, public services, and public welfare. Therefore, the tax system must be equipped with legal instruments capable of protecting state revenues from various forms of irregularities committed by taxpayers, including corporations. However, research results indicate that to date, there are no provisions explicitly regulating corporations as subjects of criminal law in tax crimes. This regulatory gap has resulted in corporations being positioned only as taxpayers from an administrative perspective, while from a criminal law perspective, they still lack adequate regulation. (Constitution of the Republic of Indonesia, 1945; Law No. 28 of 2007)

Research findings show that this lack of norms directly impacts legal certainty. Legal certainty is one of the primary objectives of law, as stated by Gustav Radbruch, who calls for clear, consistent, and uniformly applicable legal regulations. In the context of tax crimes, the absence of

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regulations regarding corporate criminal liability creates uncertainty regarding when a corporation can be considered a perpetrator of a crime, how corporate wrongdoing must be proven, and who is authorized to represent the corporation in criminal proceedings. This ambiguity opens up room for differing interpretations among law enforcement officials, thereby reducing legal certainty in the application of tax criminal provisions. (Hiariej, 2016)

Furthermore, the research results indicate that this legal uncertainty has implications for differences in law enforcement practices in the field. In several tax cases involving business entities, law enforcement officials prefer to name company directors or managers as suspects rather than subjecting the corporation to criminal law. This pattern arises from the absence of norms that explicitly provide a legal basis for investigators, public prosecutors, or judges to impose criminal liability on corporations. As a result, law enforcement becomes dependent on the interpretation of each law enforcement official, potentially leading to inconsistent decisions and reducing public trust in the criminal justice system in the tax sector.

The analysis also indicates that the lack of regulation of corporate criminal liability hampers the realization of substantive justice. Law enforcement has tended to be oriented toward formal justice, namely by imposing penalties on individuals who directly commit crimes. However, in modern tax crime practice, various strategic decisions that lead to violations are often the result of corporate policies aimed at gaining economic gain. If only company managers are punished, while corporations continue to benefit from the proceeds of the crime, the legal objective of providing substantive justice has not been achieved. Thus, there is a gap between those who receive economic benefits and those who bear the criminal consequences. (Ali, 2015; Sjahdeini, 2017)

The concept of substantive justice, as developed in the thought of Aristotle, John Rawls, and Roscoe Pound, positions law as an instrument for realizing real justice in society. In the context of this research, justice is not sufficient to be realized only through the application of formal legal procedures; it must also consider who actually benefits from tax crimes. Therefore, the research results indicate that imposing criminal liability on corporations is one form of substantive justice, because corporations, as recipients of economic benefits, are also held accountable for the state losses they incur.

Further analysis indicates that suboptimal corporate criminal liability impacts the effectiveness of state loss recovery. In many tax cases, state losses arise from systematic corporate policies implemented through manipulation of tax administration, the use of fictitious tax invoices, false tax return reporting, and various other forms of tax avoidance. If corporations cannot be subject to criminal law, then the state can only impose criminal penalties on individuals without a

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strong basis for imposing fines on corporations, confiscating profits from criminal acts, or seizing company assets as part of state loss recovery. (Morris, 2013; Mendrofa, 2013)

This analysis also indicates that the effectiveness of tax criminal law enforcement is less than optimal if it focuses solely on individual accountability. One of the goals of criminal punishment is to create a deterrent effect so that perpetrators and other parties do not repeat similar crimes. However, if a corporation can continue to operate its business after its management has been sentenced, the deterrent effect is felt only by the individual, while the organization that benefits from the crime can continue to operate as usual. This situation results in the goal of criminal punishment not being optimally achieved because the organizational system that caused the crime does not undergo significant change. (Arief, 2013; Hiariej, 2016)

The analysis indicates that in modern business practices, various decisions regarding tax reporting and payment are generally strategic policies established by corporate bodies. Directors, commissioners, and company officials act on behalf of the corporation to implement these policies. Therefore, when a company policy leads to tax crimes, the primary benefit is not only enjoyed by individuals but also by the corporation as a legal entity. The discrepancy between those who benefit and those held criminally accountable demonstrates that the current legal system is unable to fully address the perpetrators of criminal acts. (Ali, 2015; Sjahdeini, 2017)

In addition to impacting the effectiveness of law enforcement, research also shows that the lack of norms impacts state financial protection. Taxes are the primary source of state revenue that supports the implementation of various national development programs. Therefore, every tax crime is inherently a threat to the country's fiscal stability. Advances in information technology and the complexity of business transactions have led to increasingly sophisticated tax crime methods, such as the use of transfer pricing schemes, financial statement manipulation, and the use of affiliated companies to mitigate tax obligations. Most of these methods involve corporations as the primary perpetrators, making the potential for state losses far greater than those committed by individuals. (Constitution of the Republic of Indonesia, 1945; Law No. 28 of 2007; Morris, 2013)

The analysis indicates that the lack of regulations regarding corporate criminal liability hinders law enforcement officials from optimally recovering state losses. When profits from criminal acts remain in the hands of corporations, while criminal penalties are imposed only on company managers, corporate assets cannot be fully utilized for state recovery. This situation has the potential to create moral hazard, as corporations may assume that legal risks are borne solely by certain individuals, while the business entity can maintain its legal standing and assets. In the long term, this situation can foster a culture of tax non-compliance that becomes increasingly difficult to eradicate. (Ali, 2015; Setiyono, 2004)

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Based on the overall research results, it can be concluded that the urgency of regulating corporate criminal liability in tax crimes is not only related to the need to fill the gap in legal norms, but also serves as a crucial instrument in realizing legal certainty, substantive justice, effective law enforcement, and protection of state finances. Considering that taxes are the primary instrument in realizing the welfare state concept, the state requires a legal formulation that expressly recognizes corporations as subjects of criminal law and their accountability mechanisms. Thus, the criminal tax law system in Indonesia is expected to provide a deterrent effect, optimize the recovery of state losses, and strengthen fiscal protection as part of efforts to realize sustainable national development. (Arief, 2020; Ali, 2015)

Ius ConstituendumRegulations Concerning Corporate Criminal Liability in the Tax Sector Reviewed Through the Theory of Criminal Law Politics

Criminal law policy is essentially the direction of state policy in establishing criminal law that is able to respond to the evolving needs of society while achieving state goals through an effective, just, and legal system that provides legal certainty. In the context of tax law, criminal law policy is not only understood as a policy to impose criminal penalties on tax violators, but also as an instrument to maintain the stability of state revenues, which are the backbone of national development financing. Therefore, the formation of criminal norms in the tax sector must be able to adapt to the increasingly complex forms of modern economic crime, especially when crimes are committed by corporations as business entities. Regulations that are still oriented towards individual accountability are no longer adequate because practical reality shows that various strategic decisions in tax crimes are actually born from corporate policies. Criminal law policy must be directed towards establishing norms that recognize corporations as subjects of criminal law so that the goal of protecting the state's fiscal interests can be optimally realized. (Arief, 2020; Adinda, 2024)

The concept of legal politics, as proposed by Mahfud MD, positions law as a legal policy formulated by the state to achieve state goals. This perspective demonstrates that the formation of a law not only considers legal aspects but also takes into account social, economic, and political conditions and community needs. In the field of taxation, the formation of criminal law is not sufficient to merely regulate the administrative obligations of taxpayers but must also provide an effective mechanism to address abuse of the tax system by corporations. Regulations regarding corporate criminal liability are part of the legal policy that must be implemented as a form of protection for state revenues. If criminal tax law is unable to reach the main perpetrators who profit from criminal acts, the law's function as an instrument for protecting the public interest will not be optimally achieved. (Arief, 2020; Adinda, 2024)

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Tax law is essentially part of state administrative law, reinforced by criminal provisions as a means of law enforcement. Therefore, the existence of criminal sanctions in the Law on General Provisions and Tax Procedures is not intended to replace administrative mechanisms, but rather serves as a last resort when violations have resulted in losses to state revenues. This concept, known as administrative penal law, positions criminal penalties as the ultimum remedium after administrative measures are no longer able to protect the state's fiscal interests. However, this characteristic should not be used as an excuse to ignore the need for regulations regarding corporate criminal liability. Precisely because tax crimes are economic crimes, most of which are committed through business entities, administrative criminal law must evolve to accommodate corporations as subjects of criminal law. (Arief, 2013; Hiariej, 2016)

The political direction of criminal law in the formation of tax law must take into account developments in modern business practices, which indicate the increasing involvement of corporations in tax crimes. The formal compliance ratio of corporate taxpayers, which remains lower than that of individual taxpayers, demonstrates that corporate compliance remains a serious challenge in the national tax system. Furthermore, the contribution of corporate taxpayers to tax revenue is far greater than that of individual taxpayers. This situation indicates that any deviations committed by corporations will have a significantly greater impact on state finances. Therefore, criminal law policy must be directed toward providing stronger protection for state revenues through the establishment of a clear and comprehensive corporate criminal accountability mechanism. (Arief, 2020; Adinda, 2024; Morris, 2013)

The enactment of Supreme Court Regulation No. 3 of 2025 is presented in this study as a response to the legal gap regarding the handling of tax crimes involving corporations. The regulation provides guidelines for judges on the procedures for handling tax crimes while broadening the interpretation of legal subjects within tax criminal provisions. The phrase "every person," previously open to multiple interpretations, is now understood to encompass both individuals and corporations. This regulation demonstrates a shift in thinking within the criminal justice system, suggesting that corporations are no longer merely objects of tax administration but can also become perpetrators of criminal acts. However, the existence of the Supreme Court Regulation remains limited, as it is only binding within the judicial sphere and cannot replace substantive provisions in law.

PERMA Number 3 of 2025 also addresses the scope of parties who can be held criminally liable on behalf of a corporation. This includes not only formal administrators listed in the company's organizational structure, but also parties with actual control over corporate policies, such as beneficial owners, order givers, and other parties who factually determine the direction of

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company policy. This approach reflects the development of the concept of corporate criminal liability, which is no longer limited to formal official relationships but instead emphasizes functional relationships in decision-making. This approach provides greater opportunities for law enforcement officials to investigate the intellectual actors behind tax crimes committed by corporations.

Despite progress in judicial practice, the regulation through the Supreme Court Regulation (PERMA) has not been able to resolve the entire problem because norms regarding corporate criminal liability are still not explicitly included in the KUP Law or the HPP Law. From a hierarchical perspective, regulations regarding criminal law subjects should be at the statutory level to have broader binding force and serve as guidelines from the inquiry, investigation, prosecution, and trial stages. As long as these regulations are only contained in the PERMA, there is still the potential for differences in interpretation at the law enforcement stage outside the judicial environment. Therefore, future criminal law policy must be directed at changing the norms in the KUP Law so that corporations are explicitly recognized as subjects of criminal law in the taxation sector. (Mendrofa, 2013; Arief, 2020)

Developments in criminal procedure law concerning the Deferred Prosecution Agreement (DPA) also provide new opportunities for resolving corporate tax crimes. Such a mechanism may allow prosecution to be deferred subject to the corporation fulfilling specified obligations, such as paying state losses, improving compliance systems, or implementing internal compliance programs. This approach aligns with the character of economic criminal law, which places greater emphasis on recovering state losses than solely on punishment. In tax cases, the implementation of the DPA has the potential to provide greater benefits because state revenues can be recovered more quickly without having to wait for lengthy and expensive court proceedings.

However, the application of the DPA in tax cases requires harmonization with the mechanisms stipulated in the KUP Law, particularly regarding the disclosure of untrue acts and the termination of investigations based on the payment of state revenue losses and administrative sanctions. Currently, several mechanisms exist with similar objectives, namely recovering state losses while stopping criminal proceedings, but the authority to implement them rests with different institutions. This situation has the potential to create overlapping authority if not systematically regulated. Therefore, the establishment of new norms in the KUP Law requires integrating the DPA mechanism with the existing tax crime resolution system to create legal certainty and efficient law enforcement.

Future criminal law policy should be directed toward establishing a comprehensive corporate criminal accountability system through amendments to the KUP Law and the HPP Law.

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This reformation should include recognition of corporations as subjects of criminal law, criteria for corporate criminal liability, parties who can be held accountable, forms of sanctions appropriate to the characteristics of corporations, and a case resolution mechanism that prioritizes recovery of state losses without neglecting the deterrent effect. Thus, legal reform not only addresses the normative gap that has hampered law enforcement but also strengthens the function of criminal tax law as an instrument of state fiscal protection. The formation of these regulations represents a concrete manifestation of criminal law policy that is adaptive to developments in corporate crime while simultaneously achieving legal certainty, justice, and benefit in the national tax system. (Arief, 2020; Adinda, 2024; Ali, 2015)

4. CONCLUSION

Regulation of corporate criminal liability in tax crimes is a very urgent need considering that the Law on General Provisions and Tax Procedures and the Law on Harmonization of Tax Regulations do not yet recognize corporations as subjects of criminal law that can be held directly accountable. This normative vacuum gives rise to various legal implications in the form of legal uncertainty, suboptimal fulfillment of substantive justice, weak effectiveness of tax law enforcement, and reduced protection of state finances. In practice, law enforcement is still oriented towards criminalizing managers or directors, while corporations, as parties that benefit economically from criminal acts, are often exempt from criminal liability. This condition indicates that the tax criminal law system is not yet able to address the increasingly complex development of corporate crime, thus requiring regulations that explicitly recognize corporations as perpetrators of tax crimes. (Ali, 2015; Mendrofa, 2013)

The application of the strict liability doctrine is relevant as a basis for corporate criminal liability in the taxation sector because tax crimes are characterized by economic crimes committed through a corporate organizational system and are difficult to prove through an individual fault approach. This doctrine allows for the imposition of criminal liability on corporations based on the fulfillment of the prohibited act elements and a causal relationship with the loss of state revenues without relying entirely on proving the element of management error. However, the application of strict liability cannot be applied absolutely, but must be limited to certain types of tax crimes that cause significant losses to state revenues and still be accompanied by protection of the principles of due process of law, the principle of proportionality, and the rights of corporations in the criminal justice process. (Arief, 2013; Hiariej, 2016; Moeljatno, 2008)

Future reforms to criminal tax law need to be guided by a criminal law policy that comprehensively integrates corporate criminal liability provisions into the General Provisions and

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Tax Procedures Law as lex specialis. This reformulation should include recognition of corporations as subjects of criminal law, accountability criteria based on the strict liability doctrine, parameters for determining corporate wrongdoing, types of criminal sanctions appropriate to the characteristics of legal entities, and a case resolution mechanism oriented toward recovering state revenue losses, including harmonization with Supreme Court Regulation Number 3 of 2025 and the Deferred Prosecution Agreement mechanism. With this formulation, the criminal tax law system is expected to provide legal certainty, increase the effectiveness of law enforcement, strengthen protection of state finances, and realize justice in addressing tax crimes committed by corporations. (Arief, 2020; Ali, 2015; Mendrofa, 2013)

REFERENCES

Ali, M. (2015). Principles of corporate criminal law. Rajawali Pers.

Arief, B. N. (2013). Selected chapters on criminal law. PT Citra Aditya Bakti.

Arief, B. N. (2020). Criminal policy. Master of Law Program, Diponegoro University.

Hiariej, E. O. S. (2016). Principles of criminal law. Cahaya Atma Pustaka.

Marzuki, P. M. (2010). Legal research. Kencana.

Moeljatno. (2008). Principles of criminal law. Rineka Cipta.

Setiyono. (2004). Corporate crime: A victimological analysis and corporate accountability in Indonesian criminal law. Bayumedia Publishing.

Sjahdeini, S. R. (2017). Criminal law: Corporate crime and its intricacies. Kencana.

Mendrofa. (2013). Corporate criminal liability formulation policy in Law Number 28 of 2007 concerning General Provisions and Tax Procedures. Diponegoro Law Journal, 2(2).

Zakaria, A. (2019). Criminal law enforcement of Indonesian Commerce Act Number 7 of 2014 for corporation perpetrators: Why it will be difficult. Brawijaya Law Journal, 6(2), 189–206.

Adinda, D. (2024). Legal politics in criminal law reform in Indonesia. WATHAN: Journal of Social Sciences and Humanities, 1(1), 1–12.

Morris, G. (2013). Corporate social responsibility and tax avoidance: A comment and reflection. Accounting Forum, 37(1), 68–72.

The 1945 Constitution of the Republic of Indonesia.

Law Number 28 of 2007 concerning the Third Amendment to Law Number 6 of 1983 concerning General Provisions and Tax Procedures.

Law Number 32 of 2009 concerning Environmental Protection and Management.